Supreme Court, U.S.
FILED
MAY 6 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-584

In the Supreme Court of the United States

October Term, 1985

JACK GRANT, JR., EVELYN H. GRANT, and all other persons similarly situated,
Petitioners,

vs.

GENERAL ELECTRIC CREDIT CORPORATION,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

SUPPLEMENTAL BRIEF OF RESPONDENT GENERAL ELECTRIC CREDIT CORPORATION IN OPPOSITION TO PETITION

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Respondent General Electric Credit Corporation ("GECC")[1] respectfully files this Supplemental Brief in Opposition to Petition pursuant to Rule 22.6 of the Rules of this Court to address issues raised by the Brief of the United States as Amicus Curiae.

1. The listing of the parent companies, subsidiaries, and affiliates of GECC as required by Rule 28 of the Rules of this Court is included as an appendix to the Brief of Respondent General Electric Credit Corporation in Opposition to Petition.

THE PETITION IN THIS CASE AND THOSE IN NOS. 85-541 AND 85-717 SHOULD BE DENIED.

The United States has recommended that this Court review only the second question presented in *Barclays American/Credit, Inc. v. Quiller* ("Quiller"), No. 85-541. The United States does not recommend that certiorari be granted in either the instant case ("*Grant*") or in the plaintiff's cross petition in *Quiller*, No. 85-717, but recommends that these petitions should be held and disposed of in light of the *Quiller* petition, No. 85-541. Although GECC agrees that the result reached by the court of appeals in *Quiller* was incorrect, the second issue raised in the *Quiller* petition does not present a question worthy of review on certiorari at this time. All three petitions should be denied.

A. The Petitions Do Not Present a Constitutional Issue, a Split in the Circuits, or an Issue of National Importance and General Application.

The second question presented in the *Quiller* petition, to wit, whether the court of appeals erred in concluding that federal preemption of state usury laws is not available if a mobile home credit contract contains language inconsistent with the debtor's federal right to notice and opportunity to cure defaults, does not satisfy *any* of the considerations generally governing review on certiorari as stated in Rule 17 of the Rules of this Court. The question does not raise a constitutional issue. It is not an issue upon which there is a split in the circuits. In its present posture, it is not an important question of federal law of sufficiently general application to warrant this Court's review at this time.

As the Brief of the United States recognizes, few mobile home credit contracts are presently being written in reliance on the preemption of state usury limits created by § 501(c) of the Depository Institutions Deregulation and Monetary Control Act of 1980 ("DIDMCA"), 12 U.S.C. § 1735f-7 note. (Brief of the United States at 13). Falling interest rates and changes in state usury laws have reduced the need for preemption of state usury laws in order to make mortgage funds available. Indeed, DIDMCA no longer has any application to mobile home credit transactions in Georgia or in the fourteen other states that have opted out of DIDMCA. (Brief of the United States at 14).

A decision by this Court in *Quiller*, No. 85-541, would therefore be relevant only to that existing pool of outstanding mobile home credit contracts that do not satisfy the Eleventh Circuit's affirmative misrepresentation test relating to contractual descriptions of the right to notice of right to cure default. This standard does not put all mobile home credit contracts that rely on preemption in jeopardy.

There has been no flood of litigation on this subject. Rather, virtually all of the pending litigation can be attributed to one group of attorneys from Augusta, Georgia. The pending scope of litigation does not warrant consideration by this Court.

B. The Issues Presented in the Quiller Petition Are Not Ripe.

The issues presented in the *Quiller* petition, No. 85-541, are not ripe for review by this Court. Developing Georgia case authority strongly indicates that statutory amendments eliminating the state law penalties that plaintiffs seek to enforce would be applied to the *Quiller* case.

See Ward v. Hudco Loan Co., 254 Ga. 294, 328 S.E.2d 729 (1985); *Fountain v. Dixie Finance Corp.*, 252 Ga. 543, 314 S.E.2d 906 (1984); *Ehrman v. Manning*, 177 Ga. App. 442, 339 S.E.2d 652 (1986); O.C.G.A. § 7-4-3, § 7-4-5 (Michie Supp. 1985).[2] Further, neither the district court nor the court of appeals addressed the potentially dispositive statute of limitations issue. Resolution of these questions on remand in *Quiller* could moot all issues and obviate the need to resolve the federal issues presented.

Finally, Supreme Court review of these questions is not necessary to establish a more definite national standard for preemption. Both Congress and the Federal Home Loan Bank Board are considering amendments which could limit the applicability of any Supreme Court ruling in this area.

C. Disposition of the Petition in Grant Should Not Be Deferred Until the Merits of the Quiller Petition Are Resolved.

The petition in *Grant* does not turn on the disposition of the question recommended for review by the United States in the *Quiller* petition, No. 85-541. Acceptance of the United States' position that preemption is not defeated by an inaccurate contractual description of the federal right to notice and opportunity to cure defaults would require that the judgment below in *Grant* be affirmed. Alternatively, a conclusion that contractual language inconsistent with the debtor's federal law of right to notice and opportunity to cure defaults could result in a loss of preemption would not affect the result in *Grant*. The en

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2. This issue is pending and open in the Eleventh Circuit in *Moyer v. Citicorp Homeowners, Inc.*, No. 84-8166 (11th Cir. filed Feb. 27, 1984). Citicorp has moved the Eleventh Circuit to certify this issue to the Georgia Supreme Court.

banc Eleventh Circuit reviewed the specific language of the GECC contract and properly concluded that the GECC contract, "in mandatory terms, unambiguously informs the debtor that he or she 'shall be given notice of right to cure default' before 'seller is permitted' to exercise its right to accelerate." *Grant v. General Electric Credit Corp.*, 764 F.2d 1404, 1406 (11th Cir. 1985) (en banc). In light of this conclusion of the en banc court of appeals, there is no reason to hold the GECC contracts in limbo in the event that this Court reviews the question presented by the United States.

CONCLUSION

The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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